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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,136	01/05/2000	DAVID WILLIAM HOUSE	1420-2	1290
20575	7590	11/08/2005		
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			EXAMINER NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2646	
DATE MAILED: 11/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/478,136

Applicant(s)

HOUSE, DAVID WILLIAM

Examiner

Suhan Ni

Art Unit

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 7-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2646

DETAILED ACTION

1. The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group **Art Unit 2646**.
2. This communication is responsive to the response filed 06/07/2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Loeb et al. (U. S. Pat. - 5,571,148).

Regarding claim 7, Loeb et al. disclose a cochlear implant system comprising: at least one electrode (38) for coupling with the patient's cochlea; an internal coil (30) for implanting in the patient to drive the electrode; a microphone (70) for outputting electrical sound signals in response to external sounds; an oscillator (66) for generating an electrical analog carrier signal having a frequency **greater than** 20 kHz (col. 11, lines 11-12); a modulator (66) for modulating the carrier signal with the sound signals to generate a modulated signal (col. 11, lines 9-16); and an external coil (56) for magnetically coupling the modulated signal to the internal coil, wherein the modulated signal is electrically applied to the cochlea (Figs. 2B and 4A) as claimed.

Regarding claims 8-9, Loeb et al. further disclose the cochlear implant system, wherein the modulator is an amplitude modulator (AM) or a frequency modulator (FM) (col. 11, lines 12-16).

Regarding claim 10, Loeb et al. further disclose the cochlear implant system, wherein the electrical analog carrier signal has a frequency of **at least** 32 kHz (col. 11, lines 11-12) as claimed.

Regarding claims 11-12, Loeb et al. further disclose the cochlear implant system, wherein the modulator is an amplitude modulator (AM) or a frequency modulator (FM) (col. 11, lines 12-16).

Response to Amendment

4. Applicant's arguments dated 06/07/2005 have been fully considered, but they are not deemed to be persuasive.

The cited reference (U. S. Pat. - 5,571,148) does clearly show a cochlear implant system (Fig. 4A), said system comprising: at least one electrode (38) for coupling with the patient's cochlea; an internal coil (30) for implanting in the patient to drive the electrode; a microphone (70) for outputting electrical sound signals in response to external sounds; an oscillator (66) for generating an electrical analog carrier signal having a frequency greater than 20 kHz (col. 11, lines 11-12); a modulator (66) for modulating the carrier signal with the sound signals to generate a modulated signal (col. 11, lines 9-16); and an external coil (56) for magnetically coupling the modulated signal to the internal coil, wherein the modulated signal is electrically applied to the cochlea (Figs. 2B and 4A) as claimed.

Regarding the only independent claim 7, the limitation of "the modulated signal is electrically applied to the cochlea" is clearly taught by Loeb et al. A person having average skill

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in the art will clearly see that not only “the modulated signal”, but also said external sounds, said electrical sound signals are “electrically applied to the cochlea”!

In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., “**the cochlea is directly stimulated with the modulated signal**” on page 4) are **not** recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the applicant states that “claim 1 recite” (Line 14 on page 4). But, applicant has canceled claim 1.

Conclusion

5. **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

6. Any response to this final action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE"), or

(703) 305-9508, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (571)-272-7505, and the number for fax machine is (571)-273-7505. The examiner can normally be reached on Monday through Thursday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Sinh N. Tran**, can be reached at (571)-272-7564.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600, or please see <http://www.uspto.gov/web/info/2600>.

November 1, 2005


SUHAN NI
PRIMARY EXAMINER